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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CORNELL MITCHELL,

Petitioner and Appellant,

v.

CALIFORNIA DEPARTMENT OF
MOTOR VEHICLES et al.,

Defendants and Respondents.

B238586

(Los Angeles County
Super. Ct. No. BS131818)

APPEAL from a judgment of the Superior Court of Los Angeles County,
James C. Chalfant, Judge. Affirmed.

Cornell Mitchell, in pro. per.

Kamala D. Harris, Attorney General, Alicia M. B. Fowler, Assistant
Attorney General, Celine M. Cooper and Melissa F. Day, Deputy Attorneys
General, for Defendants and Respondents.

INTRODUCTION

Cornell Mitchell appeals from a judgment denying appellant's first amended petition for writ of mandate (FAP). The trial court denied the FAP for failure of proof because appellant submitted no admissible evidence in support of the FAP. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 29, 2001, appellant filed a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. After the trial court overruled a demurrer to the petition, appellant filed an FAP, requesting that the trial court issue an alternative writ or writ of mandate directing George Valverde, the director of the Department of Motor Vehicles (DMV) and the DMV (respondents) to "remove from [his] driving record . . . [a] 9.05.2002 chemical test refusal, . . . [a] 9.16.2006 chemical test refusal, . . . and [a] 12.29.2007 chemical test refusal . . . pursuant to [Vehicle Code section] 1808(b)(3)."¹ Appellant asserted that "the reporting of these chemical test refusals . . . violate[d] the statute of limitation pursuant to . . . section 1808(b)(3) . . . and the Ex Post Facto Clauses of the California Constitution . . . and the United States Constitution."

Appellant attached as an exhibit an unauthenticated copy of a document entitled "California Department of Motor Vehicles *** Customer Receipt Copy *** Driver License/Identification Card Information Request" and copies of various printouts of Vehicle Code sections and portions of the California and United States Constitutions. The "Information Request" document showed that appellant's driver's license had been revoked because of a chemical test refusal on September 16, 2006 and December 29, 2007. The document also showed appellant had

¹ All further statutory citations are to the Vehicle Code, unless otherwise indicated.

suffered a conviction pursuant to section 23152, subdivision (b) for a September 5, 2002 violation.

On October 11, 2011, appellant filed an opening brief, asserting that “[t]he statute of limitation for the reporting of abstracts of convictions, accident reports, and all other violations of the vehicle code . . . is governed by California . . . Vehicle Code section 1808(a[])-([]f).” He contended that the reporting of chemical refusal tests is covered by section 1808, subdivision (b)(3).

Respondents filed an opposition to the FAP. They asserted that two of the three chemical test refusals resulted in convictions. Respondents attached authenticated records showing that on September 5, 2002, appellant was arrested for violating section 23152, subdivision (b). He refused a chemical test and was convicted of this offense on January 22, 2003. Similarly, on December 29, 2007, appellant was arrested for violating section 23152, subdivision (a), refused a chemical test and was convicted on November 26, 2008. As to the September 16, 2006 chemical test refusal, respondents produced authenticated records showing that appellant’s blood alcohol concentration (BAC) was determined to be 0.23 percent on that occasion, and that appellant’s license was revoked because of his refusal to submit to a chemical test.

On November 16, 2011, appellant filed a reply in support of the FAP. The reply was irrelevant to the issues raised in the FAP, and attached an irrelevant and unauthenticated pleading from another matter.

On December 15, 2011, the trial court held a hearing on the FAP. The court issued a tentative ruling, stating, “Mitchell’s moving papers do not submit any evidence in support of the FAP. He bears the burden of proof in this matter. Due to his failure to present any evidence, he is not entitled to any relief. The petition

must be denied for failure of proof.” (Fn. omitted.) The trial court adopted its tentative ruling, and issued a judgment denying the FAP.

On January 18, 2012, appellant filed a notice of appeal from the judgment.

DISCUSSION

“In a petition for writ of mandate brought pursuant to Code of Civil Procedure section 1085, . . . the petitioner bears the burden of pleading and proving the facts on which the claim for relief is based. [Citations.]” (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153-1154.) “[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.”” (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.) Finally, to the extent the appeal turns on an interpretation of the Vehicle Code, we review issues of statutory construction de novo. (*Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74.)

In his opening brief on appeal, appellant did not address the issue of lack of proof. Rather, he reiterated his argument that respondents were prohibited by section 1808, subdivision (b)(3) and the ex post facto clauses of the state and federal constitutions from reporting the chemical test refusals. We conclude that appellant has failed to meet his burden of proof to show entitlement to relief.²

² It is unclear exactly what remedy appellant seeks in the FAP. He contends he requested that respondent “remove three (3) chemical test refusals from his driving record.” But, he also claims that the “true foundation” of his petition is the

Section 1808 provides in pertinent part that:

“(a) Except where a specific provision of law prohibits the disclosure of records or information or provides for confidentiality, all records of the department relating to the registration of vehicles, other information contained on an application for a driver’s license, abstracts of convictions, and abstracts of accident reports required to be sent to the department in Sacramento, except for abstracts of accidents where, in the opinion of a reporting officer, another individual was at fault, shall be open to public inspection during office hours. All abstracts of accident reports shall be available to law enforcement agencies and courts of competent jurisdiction.

“(b) The department shall make available or disclose abstracts of convictions and abstracts of accident reports required to be sent to the department in Sacramento, as described in subdivision (a), if the date of the occurrence is not later than the following:

“(1) Ten years for a violation pursuant to Section 23140, 23152, or 23153.

“(2) Seven years for a violation designated as two points pursuant to Section 12810, except as provided in paragraph (1) of this subdivision.

“(3) Three years for accidents and all other violations.

Section 1808 is neither a penal statute nor a statute of limitations. It neither punishes a defendant for a vehicular violation, nor limits the time during which a criminal action may be brought against a defendant. Rather, it requires the DMV to maintain, make available, or disclose certain facts to designated entities during certain time periods. Thus, the ex post facto clauses of the federal and state constitutions do not apply to the reporting requirements in section 1808.

Accordingly, appellant is not entitled to relief pursuant to the ex post facto clauses of the state and federal constitutions.

application of the “statute of limitations” to the “reporting of chemical test refusals.” As explained below, section 1808 is not a statute of limitations.

Similarly, section 1808, subdivision (b) on which appellant relies, applies only to “abstracts of convictions and abstracts of accident reports.” It does not purport to prevent respondents from maintaining records of chemical tests refusals or prohibit respondents from disclosing them. In short, appellant has failed to demonstrate an entitlement to relief.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.